

AMENDED IN ASSEMBLY JUNE 17, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

No. 2421

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**Introduced by Assembly Member Nestande**  
**(Coauthors: Assembly Members Allen, Maienschein, and Olsen)**  
(Coauthor: Senator Cannella)

February 21, 2014

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An act to add and repeal Section 23692 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2421, as amended, Nestande. Corporation Tax Law: credits: Homeless and Foster Youth Opportunities Investment Act.

The Corporation Tax Law allows various credits against the taxes imposed by that law.

This bill, for taxable years beginning on or after January 1, 2015, and before January 1, 2020, would allow a credit against the taxes imposed under that law for 50% of monetary contributions to qualified *K-College* education scholarship organizations, as defined, to fund qualified college or ~~K-12~~ *K-College education* scholarships for specified pupils to attend private schools, as defined, or for transportation costs to attend private, public, or charter schools, *as defined*. The bill would provide that the credit would not exceed \$200,000 per taxpayer, that the credit would be awarded on a first-come, ~~first-serve~~ *first-served* basis, and that the credit would have an aggregate cap of ~~\$50,000,000~~ *\$10,000,000* for

each calendar year. The bill would require the Franchise Tax Board and the State Department of Education to administer the credit, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Homeless and Foster Youth Opportunities Investment Act.
- 3 SEC. 2. The Legislature finds and declares the following:
- 4 (a) Providing tax incentives to encourage private investments
- 5 for the common good is sound public policy.
- 6 (b) Expanding educational opportunities and improving the
- 7 quality of, and access to, educational services within the state are
- 8 valid public purposes that the Legislature may promote using its
- 9 sovereign power to determine tax policy.
- 10 (c) Creative tax policy can inspire greater charitable
- 11 contributions and public-private partnerships that ensure additional
- 12 resources for the education of all children in California.
- 13 (d) Encouraging voluntary support for education, without
- 14 prejudice for or against any state-sanctioned educational enterprise
- 15 promotes the state's interest and common good in providing the
- 16 highest quality education to all children in the state.
- 17 (e) At a time when fiscal realities challenging ~~California school~~
- 18 ~~communities demand~~ *California's education system demand*
- 19 innovative ways to deliver vital education services to public and
- 20 private pupils in kindergarten and grades 1 to 12, inclusive, and
- 21 in college, charitable giving for educational purposes should be
- 22 stimulated.
- 23 (f) California benefits from ensuring the accessibility and
- 24 viability of strong public, as well as, private school *and college*
- 25 options in educating students, especially for those with the greatest
- 26 needs: our homeless and foster youth.
- 27 SEC. 3. Section 23692 is added to the Revenue and Taxation
- 28 Code, to read:
- 29 23692. (a) For each taxable year beginning on or after January
- 30 1, 2015, and before January 1, 2020, there shall be allowed as a
- 31 credit against the "tax," as defined in Section 23036, an amount
- 32 equal to 50 percent of the monetary contribution made by a

1 taxpayer during the taxable year, not to exceed two hundred  
2 thousand dollars (\$200,000) to a qualified *K-College* education  
3 scholarship organization to fund qualified ~~college or K-12~~  
4 *K-College* education scholarships ~~for a specified pupil to attend~~  
5 ~~private school or to fund partial or full payments of fees associated~~  
6 ~~with the general costs of transportation to attend a private, public,~~  
7 ~~or charter school.~~

8 (b) For purposes of this section:

9 (1) “Qualified *K-College* education scholarship organization”  
10 or “ESO” means an organization in this state that meets the  
11 following requirements:

12 (A) Is organized and operated with a purpose of providing  
13 qualified ~~college or K-12~~ *K-College* education scholarships to  
14 *specified* pupils attending a public, *charter*, or private school in  
15 California.

16 (B) (i) If the organization has three or more years of audited  
17 financial statements, distributes to specified pupils at least 80  
18 percent of contributions for which a credit is claimed for qualified  
19 ~~college or K-12~~ *K-College* education scholarships .

20 (ii) If the organization has fewer than three years of audited  
21 financial statements, distributes at least 90 percent of contributions  
22 for which a credit is claimed for qualified ~~college or K-12~~  
23 *K-College* education scholarships .

24 (C) Makes qualified ~~college or K-12~~ *K-College* education  
25 scholarships available for specified pupils from more than one  
26 school.

27 (D) Retains data on the progress of the specified pupils  
28 participating in qualified ~~college or K-12~~ *K-College* education  
29 scholarships on nationally available norm-referenced tests to  
30 evaluate the program’s efficacy.

31 (E) Submits to the Franchise Tax Board financial and  
32 compliance audit reports performed by a certified public  
33 accountant.

34 (F) Submits to the State Department of Education quarterly  
35 reports on the number of qualified ~~college or K-12~~ *K-College*  
36 education scholarship recipients and the schools that the recipients  
37 attend.

38 (G) Applies to participate in this credit program with the State  
39 Department of Education.

40 (H) Is formed as any of the following:

1 (i) A nonprofit public benefit corporation described in Part 2  
2 (commencing with Section 5110) of Division 2 of Title 1 of the  
3 Corporations Code.

4 (ii) A nonprofit religious corporation described in Part 4  
5 (commencing with Section 9110) of Division 2 of Title 1 of the  
6 Corporations Code.

7 (iii) A duly authorized foreign nonprofit corporation that has  
8 complied with the registration requirements under Section 6910  
9 of, and Chapter 21 (commencing with Section 2100) of Division  
10 1 of Title 1 of, the Corporations Code.

11 (I) Is exempt from federal income tax as an organization  
12 described in Section 501(c)(3) of the Internal Revenue Code.

13 (2) *“Qualified education-related expenses” means expenses*  
14 *paid or incurred for the purchase of books, services, and other*  
15 *materials that support academic success, including computers,*  
16 *software, tutoring, and other academic support.*

17 (2)

18 (3) ~~“Qualified college or K-12 K-College education scholarship”~~  
19 means any of the following:

20 ~~(A) An award of tuition assistance amounting to at least 65~~  
21 ~~percent of the basic state per-pupil funding, or a private school’s~~  
22 ~~actual tuition and fees, whichever is less, that meets all of the~~  
23 ~~following requirements:~~

24 ~~(i) An initial college or K-12 education scholarship shall be~~  
25 ~~awarded to a specified pupil in kindergarten through grade 12 or~~  
26 ~~in college.~~

27 ~~(ii) May be renewed at the request of the specified pupil for~~  
28 ~~each school year until graduation from high school or college.~~

29 ~~(iii) Shall be portable and follow the specified pupil from one~~  
30 ~~school to another.~~

31 ~~(iv) Shall be provided to a private school of the specified pupil’s~~  
32 ~~choosing under the following conditions:~~

33 ~~(I) Each ESO shall establish criteria for granting scholarships~~  
34 ~~that meet the requirements of this section.~~

35 ~~(II) The pupil receiving the assistance shall remain a specified~~  
36 ~~pupil.~~

37 ~~(III) The specified pupil shall attend a private school.~~

38 ~~(IV) The specified pupil shall remain enrolled and in attendance~~  
39 ~~at the private school throughout the school year unless excused by~~  
40 ~~the applicable program for illness or other good cause.~~

1 ~~(V) The specified pupil and a parent or legal guardian of the~~  
2 ~~specified pupil shall comply with all applicable policies of the~~  
3 ~~private school.~~

4 ~~(VI) A parent or legal guardian of the specified pupil shall~~  
5 ~~ensure that the pupil has reliable transportation to and from the~~  
6 ~~applicable program.~~

7 ~~(B)~~

8 (A) Financial assistance for a specified pupil to partially or fully  
9 pay for the fees associated with the general costs of transportation  
10 to attend a ~~private~~, public, or charter, *or private* school or to attend  
11 school-related activities and other educationally beneficial  
12 programs.

13 ~~(C)~~

14 (B) Financial assistance for a specified pupil to attend college  
15 courses after graduation from high school provided by any public  
16 college or independent, *nonprofit* college where the specified pupil  
17 has been admitted to attend.

18 ~~(D)~~

19 (C) Financial assistance for a specified pupil ~~to purchase books~~  
20 ~~and other materials to support academic success, including, but~~  
21 ~~not limited to, computers and software, tutoring, and other~~  
22 ~~academic support.~~ *attending a public, charter, or private school*  
23 *for qualified education-related expenses, not provided by the*  
24 *McKinney-Vento Homeless Assistance Act of 1987 (Public Law*  
25 *100-77).*

26 ~~(3)~~

27 (4) “Specified pupil” means an individual who has applied for  
28 a ~~college or K-12~~ *K-College* education scholarship and who is  
29 either within foster care ~~or~~, has been placed in a foster care system  
30 within the State of California, *or has been placed with a relative*  
31 *caretaker through child protective services* at any time prior to  
32 graduating high school, or who was at any time prior to graduating  
33 high school, or is currently a homeless youth as defined in Section  
34 11139.3 of the Government Code *or the McKinney-Vento Homeless*  
35 *Assistance Act of 1987 (Public Law 100-77).* A specified pupil is  
36 not required to be previously enrolled in a public school or charter  
37 school to participate.

38 ~~(4)~~

39 (5) (A) “Private school” means a person, firm, association,  
40 partnership, limited liability company, or corporation offering or

1 conducting private school instruction in the State of California on  
2 the elementary or high school level, that meets all of the following  
3 requirements:

4 (i) Is accredited by the Western Association of Schools and  
5 Colleges or an affiliated organization.

6 (ii) Has filed a current private school affidavit with the State  
7 Department of Education in accordance with Section 33190 of the  
8 Education Code.

9 (iii) Complies with applicable provisions of the Health and  
10 Safety Code.

11 (iv) Complies with applicable provisions of the California Fair  
12 Employment and Housing Act (Part 2.8 (commencing with Section  
13 12900) of Division 3 of Title 2 of the Government Code).

14 (v) Utilizes background checks in connection with hiring all  
15 school employees, consistent with the standards set forth in  
16 subdivision (a) of Section 44237 of the Education Code.

17 (vi) Requires a specified pupil to take a nationally available  
18 norm-referenced test.

19 (vii) Has obtained, if it has been in operation for less than three  
20 years, a surety bond or letter of credit in an amount equal to the  
21 value of the education scholarship payments for one quarter.

22 (B) "Private school" also means an institution that meets the  
23 definition of a "qualifying institution" in paragraph (1) of  
24 subdivision (l) of Section 69432.7 of the Education Code.

25 (C) "Private school" does not include a program of instruction  
26 offered by a tutor or a nonaccredited private school to a pupil who  
27 is exempt from compulsory full-time education under Article 3  
28 (commencing with Section 48220) of Chapter 2 of Part 27 of  
29 Division 4 of Title 2 of the Education Code.

30 (c) The taxpayer shall receive a certification by the State  
31 Department of Education upon a determination that the contribution  
32 meets the requirements of this section.

33 (d) In the case where the credit allowed by this section exceeds  
34 the "tax," the excess may be carried over to reduce the "tax" in  
35 the following year, and succeeding five years if necessary, until  
36 the credit is exhausted.

37 (e) This credit shall be in lieu of any other credit or deduction  
38 that the taxpayer may otherwise claim pursuant to this part with  
39 respect to a monetary contribution described in subdivision (a).

40 (f) This credit shall be claimed on a timely filed original return.

1 (g) (1) The aggregate amount of credits allowed under this  
2 section shall not exceed ~~fifty~~ *ten* million dollars ~~(\$50,000,000)~~  
3 ~~(\$10,000,000)~~ for each calendar year.

4 (2) The allocation of credits shall be on a first-come, ~~first-serve~~  
5 *first-served* basis.

6 (3) The Legislature may increase the amount in paragraph (1).

7 (h) The Franchise Tax Board and the State Department of  
8 Education shall administer this credit.

9 (1) The Franchise Tax Board shall perform all of the following:

10 (A) Adopt rules and regulations as necessary or appropriate to  
11 implement this credit.

12 (B) Track credits claimed.

13 (C) Post aggregate totals of the credits claimed on the Internet  
14 Web site of the Franchise Tax Board.

15 (D) Determine when the aggregate total of the credits reaches  
16 ~~fifty~~ *ten* million dollars ~~(\$50,000,000)~~ ~~(\$10,000,000)~~ for a calendar  
17 year.

18 (2) The State Department of Education shall do the following:

19 (A) Adopt rules and regulations necessary to determine whether  
20 the following meet the requirements of this section:

21 (i) An ESO.

22 (ii) A contribution.

23 (B) Submit a list of eligible ESOs that comply with the  
24 requirements of this section to the Franchise Tax Board annually  
25 by March 15.

26 (C) Establish application forms and procedures.

27 (D) Certify that the contributions meet the requirements of this  
28 section.

29 (i) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
30 Division 3 of Title 2 of the Government Code does not apply to  
31 the guidelines or regulations adopted pursuant to this section.

32 (j) This section shall remain in effect only until December 1,  
33 2020, and as of that date is repealed.

34 SEC. 4. This act provides for a tax levy within the meaning of  
35 Article IV of the Constitution and shall go into immediate effect.